

and of the call on them to bring in their claims, they can obtain no satisfaction from the estate of the deceased, after the whole of it has been actually distributed among his creditors; and, consequently, having thus negligently suffered themselves to be excluded from any recourse against the estate of their principal debtor to the prejudice of these plaintiffs, they, as his sureties, will be discharged; or if, after coming in, they fail to establish their claims, so as to obtain a dividend, then these plaintiffs will, upon like principles, be discharged; or, if they come in and establish their claims and obtain a dividend, then these plaintiffs can only be bound for the balance. To enable these plaintiffs to avail themselves of a defence, upon one or other of these grounds, against these claims, to which they have referred in their bill, it should be shewn to the auditor and distinctly set forth by him in his statement of those claims, that they are those very liabilities, specified in the bill, against which these plaintiffs ask an indemnity, or a discharge. But, it appears, though not as clearly as it ought, that those creditors, to whom these plaintiffs were so bound as endorsers or sureties, have filed their claims in this case, and that they now stand, as designated in the auditor's reports for adjudication. *Arthur v. The Attorney-General*, 2 Bland, 245, note.

The auditor reports as to some claims, that the defendants have filed a copy of the list of debts due to this intestate, from which it appears, that there are accounts which ought to be discounted in bar; and as to some other claims, that the affidavits annexed to them admit claims in bar, the amount of which, however, is not specified.

The recouper of the common law, the set-off of the English statute law, and the discounts in bar of our Acts of Assembly are, in effect and substance, the same. They refer merely to the opposing of one unconnected just claim against another, in the same suit, to prevent circuity of action; or the bringing of cross suits. The defendant, or he who, under a creditor's bill, files a distinct account in bar of any claim, thereby assumes the position of a plaintiff, and undertakes, by asserting, in that respect, the affirmative of the matter in litigation, to establish the claim he avers to

* be due, and insists on having allowed as a discount in bar.

355 And, consequently, it lays upon him to shew how much, if any, is due on the claim so offered as a discount in bar, in like manner as if he had instituted an original action for the recovery of the debt shewn by the account filed in bar, unconnected with any other claim whatever. *Strike's Case*, 1 Bland, 79; *Babington on Set-off*, 3.

With regard to those cases where some discount in bar has been admitted in the affidavit of the claimant himself; such an admission only amounts to an indefinite acknowledgment, that some such opposing claim may exist, which he, the deponent is willing